SAMUEL B. ELLIOTT, Justice of the Peace, Maryland County, Plaintiff-in-Error, *v.* His Honor JAMES H. DENT, Judge of the Fourth Judicial Circuit Court, Maryland County, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Decided May 8, 1929.

1. Courts will only decide upon issues joined between parties specifically set forth in their pleadings.
2. The Supreme Court takes cognizance only of matters of record upon the face of certified copies of the proceedings had in the lower court transmitted through the proper channel.
3. Where the bill of exceptions or assignment of errors in an appeal fails to show on its face that the exceptions taken and set up in said bill of exceptions or assignment of error conform to, and are supported by the records at the trial, the appellate court will not take cognizance of such exceptions, upon an appeal.

Plaintiff-in-error was found in contempt by the Circuit Court. On writ of error to this Court, *affirmed.*

A. B. Ricks for plaintiff-in-error. *The Attorney General* and *Solicitor General* for defendant-in-error.

MR. JUSTICE PAGE delivered the opinion of the Court.

This case comes up to this Court from the Circuit Court of the Fourth Judicial Circuit on a writ of error duly issued upon application of plaintiff-in-error in which petition or application for the writ of error the plaintiff-in-error sets up the following errors committed by the judge of the court below as follows:

"1. Because when on or about the 20th day of July, A. D. 1927, during the course of said contempt proceedings His Honour James Henson Dent ruled that the Court should grant permission before the necessary precepts should be issued in a

case of a Bill in Equity for relief against fraud and that failure or neglect to obtain such permission before precepts are issued renders the said plaintiff-in-error guilty of contempt. Plaintiff-in-error submits that in this there was manifest error.

"2. And also because on or about the 29th day of July, A. D. 1927, His Honour James H. Dent ruled that plaintiff-in-error should pay the sum of one hundred dollars together with all costs of Court for said alleged contempt to which the plaintiff-in-error excepts, and submits that in said ruling and final judgment there was manifest error.

"3. And also because when on or about the 20th day of July, A. D. 1927, after rendition of final judgment His Honour the Judge, after exceptions taken and notice of appeal given, ordered, compelled and forced said plaintiff-in-error to comply fully with his said illegal judgment.

"Whereupon for said errors assigned, plaintiff-in-error submits his petition with the foregoing assignments for issuance of a writ of error."

The foregoing constitutes the ground on which the writ of error was granted and the case brought up to this Court for review.

Now from the records sent up to this Court there is a variance and a complete misrepresentation between what really transpired in the court below, and what is set up in the assignment of errors.

There was no such proceeding instituted and had in the court below as set up in the assignment of errors from the records sent up and at present before this Court under review. From the records there were three cases in equity in which Benjamin J. H. Anderson, National Chairman and Agent of the People's Party, was Petitioner and James Scotland, Registrar for the polls of Half Cavalla, James H. Tubman, Registrar for the poll of

Grand Cess, and James Mooney, Registrar for the polls at Caraway, Respondents. The records further show that after these cases had been disposed of, the sheriff was asked if he had any reports to make. He thereupon reported that the Justice of Peace, Samuel Elliott, had signed an affidavit without the deponent appearing to make the oath according to law. The said Justice of the Peace, Samuel Elliott, in his explanation said that he signed the affidavit at seven o'clock in the night, and that Attorney Wells promised to fill in the necessary blanks left on said affidavit before filing the cases.

The court ruled therefore that said Justice pay a fine of one hundred dollars forthwith at a rate of twenty-five dollars for each affidavit so taken, and on failure, to be held in custody until the same should be paid. The court stood at recess until Tuesday, the 23rd of August. What is surprising to this Court is to find that to this ruling or judgment there were no exceptions taken. (See records.)

How counsel for plaintiff-in-error could in face of the records sent up and submitted before this Court, petition this Court for the issuance of a writ of error with an assignment of errors not apparent and supported by record is most puzzling for us to understand.

The Supreme Court takes cognizance only of matters upon the face of certified copies of the proceedings had in the lower court transmitted through the proper channel. This is a principle well founded and laid down by this Court in *Hulsmann* v. *Johnson and Johnson,* 2 L.L.R. 20 (1909). Again in the case of *Clark* v. *Barbour,* 2 L.L.R. 15 (1909), the Supreme Court laid down the principle that the Supreme Court will only decide upon issues joined between the parties specifically set forth in their pleading, and we may go further to say that where in course of the trial of a case in the court below no objection is taken or exceptions to any ruling, decision, or judgment of the trial judge at the time same is given so

as to show that such ruling, decision, or judgment is excepted to, or that such party or parties are dissatisfied therewith, the same would operate as a waiver and he or they would be estopped from raising any question thereon.

The principle of waiver in law amounts to the relinquishment or refusal to accept a right, for, in practice, it is required of everyone to take advantage of his right at the proper time, and neglecting to do so will be considered as a waiver.

If, for example, a defendant who has been named in the writ and declaration pleads over, he cannot afterwards take advantage of the error by pleading in abatement, for his plea would amount to a waiver.

Failure of counsel, either in his brief or oral argument, to allude to an assignment of error is a waiver thereof. B.L.D., "Waiver."

The plaintiff-in-error having failed to take exceptions to the ruling of the court below that he is guilty of contempt of court for which he should pay a fine of one hundred dollars and all costs, and upon failure, to be held in custody until same is paid, would be estopped from proceeding further with his case since he had not even embodied the question in his assignment of errors as a reason, because no exceptions were taken by plaintiff-in-error to the ruling and judgment of the court below. (See record.) Where the bill of exceptions or assignment of errors in an appeal fails to show on its face that the exceptions taken and set forth in said bill or assignment of errors conform to and are supported by the records at the trial, the appellate court will not take cognizance thereof. *Anderson* v. *McLain,* 1 L.L.R. 44 (1868).

An exception in the course of a trial in practice is an objection made to any decision or ruling of a court during the course of a trial upon any point of law, and no exceptions to ruling at a trial will be considered unless taken at the trial and embodied in a bill of exceptions presented to the judge at the same term or at a time allowed by the

rule of the court. If the judge's rulings and the grounds of objections thereto appear on record, the right of the party excepting is fully preserved.

It appears from the reading of the records which contain no exceptions or objections to any ruling of the court against plaintiff-in-error, and the assignment of error, the plaintiff-in-error totally misconceived his point of defense and the course of procedure in coming to this Court, which this Court regrets, as it would have enabled us to enter into a digest of the subject of contempt, by whom it can be committed, how, and when committed, which might serve as a future guide to the court from which this case travelled.

This subject, however, not being before this Court the Court cannot of its own volition enter upon a discussion on it since a party appealing should superintend the appeal and see that all legal requisites are completed.

The court of appeal will not entertain a case legally deficient in its records. This principle of law was laid down by this Court in *Johnson, Turpin, and Dunbar* v. *Roberts,* 1 L.L.R. 8 (1861).

It is strongly argued by counsel for plaintiff-in-error and submitted in his brief that it is not a contempt of court for a justice of the peace to do an illegal act outside the presence of the court whether said acts are done accidentally or intentionally, since said acts are punishable before the courts of law in the form of a prosecution for official misconduct.

It was also argued that it was arbitrary and illegal on the part of the judge to have held the plaintiff-in-error for contempt of court, contrary to the prescribed rules of law by which offenses of this nature are to be handled and considered. This Court regrets that this question was irregularly brought forward so as to permit of the consideration and a digest of the rules of both common and statutory laws of this Republic on this subject.

The original Statute of Liberia, Old Blue Book, page

12, section 1, gives the court a right and power to punish for contempt while sitting, by a fine of one hundred dollars and imprisonment during the sitting of the court. The Criminal Code of Liberia, 1914, defines contempt of court as follows:

> "Any person who willfully disobeys the lawful process or other mandate of a Court, or who commits a breach of peace tending to interrupt the proceedings of a court, Jury or referee appointed by the Court, shall be guilty of a misdemeanour and in addition to the punishment which may summarily be imposed by the Court, may also be indicted for a misdemeanour and punished."

This definition is also fully in accord with the definition laid down by Judge Bouvier and other eminent common law writers. So plainly has this principle been explained in both statute and common law writings, that no wayfaring man need fall into error in its application unless from ignorance of the law and its interpretation or impure motive as in this case.

This Court, however, as aforesaid regrets that this question as argued by plaintiff's counsel is not regularly brought up by exceptions regularly taken to the rulings and final judgment of the judge below. Hence, as the Court has said, where the bill of exceptions or assignment of errors in an appeal fails to show on its face that the exceptions taken and set up in said bill of exceptions or assignment of errors conforms to, and is supported by the records at the trial, the appellate court will not take cognizance of such exceptions upon an appeal. The appellate court will only decide upon the issues joined between parties specifically set forth in their pleadings, no matter how irregular, corrupt or distasteful may be the conduct or actions of the court below. The appellate court will not take cognizance of any matter of law to which the attention of the court below does not appear to have been called. Where an irregularity in the process and returns

was not brought to the notice of the court of inferior jurisdiction, the appellate court will not entertain an objection or motion bearing thereon. *Varne, Vombo, Ginda and Momora Singby* v. *Republic,* 1 L.L.R. 242 (1893).

The Court would here observe that the question of contempt depends not upon the intention of the party, but upon the act done by him. Now then since, as we have said in the foregoing part of this decision, the questions involved in this case have not been regularly brought, we therefore under the circumstances surrounding and apparent before us give our opinion as follows: that the judgment of the court below is hereby affirmed, and so ordered, and cost disallowed.

Affirmed.